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NO. 91-1802

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

CHERYL SORRELL, MARTY DELANE, JOSEPH McQUEEN, MARK BERRY, RON SEVERT and TAMMY SILVEY,

Petitioners,

v.

THE DAYTON WOMEN'S HEALTH CENTER, INC., K. W. DAVIS, M.D., and ROBERT SKIPTON, M.D.,

Respondents.

BRIEF IN OPPOSITION TO A PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the trial court may enter a permanent injunction which places reasonable time, place and manner restrictions on the petitioners' picketing activities which are content neutral, narrowly tailored to serve a significant governmental interest, and leave open ample alternative channels of communication.

2. Whether an injunction offends the First Amendment, where the injunction does not enjoin class members from engaging in constitutionally protected activity on private property.

3. Whether an injunction violates the due process rights of absent class members, where the injunction does not preclude the absent class members from asserting unique individual defenses.

4. Whether due process is violated where a class representative's failure to appeal the issue of class certification precludes individual class members from challenging the certification of the defendant class at a later time.

5. Whether the doctrine of prior restraint is violated, where the trial court has tailored the provisions of an injunction according to the testimony and evidence presented.

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OPINIONS BELOW

The Petitioners have incorrectly identified the date upon which the Court of Appeals for Montgomery County, Ohio entered its decision. That decision was entered neither on August 21, 1990 nor August 27, 1992. The case was decided on August 27, 1991.

The Petitioners have also erred in stating that the Court of Appeals decision is unreported. The decision is reported at 68 Ohio App.3d 579 (1991), and in Vol. 65, No. 17 Ohio St. Bar Ass'n Rpt. 579 (Apr. 27, 1992).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

In addition to the First and Fourteenth Amendment issues identified in the Petitioners' writ of certiorari, this case also involves Rule 4(A) of the Ohio Rules of Appellate Procedure, which provides in pertinent part:

RULE 4. APPEAL AS OF RIGHT — WHEN TAKEN

> **(A) Appeals in Civil Cases.** In a civil case, the notice of appeal required by Rule 3 shall be filed with the clerk of the trial court within 30 days of the date of the entry of the judgment or order appealed from.

STATEMENT OF THE CASE

A. Procedural Posture

The long procedural history of this case commenced with the Respondents' filing of a complaint for a preliminary and permanent injunction on October 14, 1986. At that time, the Respondents also moved to have the case certified as a defendant class action.

The Petitioners responded to the allegations contained in the Respondents' complaint and the trial court scheduled an evidentiary hearing on December 4, 1986. On January 15, 1987, following three days of extensive testimony and the filing of post-trial briefs, the trial court certified a defendant class and entered a preliminary injunction.

The Petitioners have selectively quoted that portion of the trial court's order defining the defendant class. The court in fact defined the class to consist of: "All individuals protesting the activities conducted at the Dayton Women's Health Center . . . *who have been personally served* with this Entry and Preliminary Injunction as well as their officers, agents, servants, employees, attorneys and those persons in active concert or participation with them *who receive personal service* of the Entry and Preliminary Injunction. (emphasis added) (Appendix to Petition for Cert., pp. 3-4).

Following the entry of a preliminary injunction, the protesters continued to engage in the type of conduct which necessitated the filing of this lawsuit in the first instance. Their protesting activities spread to the homes of the clinic's physicians and employees. In response to their conduct and after another evidentiary hearing, the trial court supplemented and modified its original injunctive order by adding additional restrictions on the number of permissible protesters and the locations where protesting activity could be conducted. On July 10, 1987, based on the evidence submitted at

the previous evidentiary hearings, the trial court permanently enjoined the defendants and defendant class in accordance with the previous orders of the court. *Dayton Women's Health Cente.* v. *Enix*, Case No. 86-3120 (Montgomery Cty. C.P. July 10, 1987) (Appendix to petition for Cert., p. 13).

An appeal of the permanent injunction was taken to the Court of Appeals of Montgomery County, Ohio. On December 5, 1988, the court affirmed virtually every aspect of the trial court's permanent injunction, with the exception of the restriction prohibiting the members of the defendant class from verbally communicating with employees of the Dayton Women's Health Center without their consent, and the prohibition concerning residential picketing. In addition, the Montgomery County Court of Appeals modified a provision of the permanent injunction relating to the acceptable noise level of the protesters' activities at the clinic. *Dayton Women's Health Center* v. *Enix*, Case No. 10579 (Montgomery Cty. C.A. December 5, 1988) (Appendix to Petition for Cert., p. 19).

The issue of the appealability of a class certification order was certified to the Supreme Court of Ohio for review. The court held that an order certifying a defendant class action is a final appealable order, affirming the decision of the court of appeals. *Dayton Women's Health Center* v. *Enix*, 52 Ohio St. 3d 67, 555 N.E. 2d 956, *reh. den.*, 53 Ohio St. 3d 706, 558 N.E.2d 61 (1990). The defendants in that case filed a Petition for Writ of Certiorari in this Court, and this Court denied the petition. *Enix, et al.* v. *Dayton Women's Health Center, Inc., et al.*, 111 S.Ct. 753 (1991).

While the appeal was pending in the Supreme Court of Ohio, the Respondents brought contempt charges against the Petitioners in this case (among others). On March 14, 1989, the trial court entered its decision sustaining in part and overruling in part the motions for contempt. A second contempt hearing was held on June 2, 1989 concerning the conduct of Petitioner, Tammy Silvey. On June 6, 1989, the trial court entered its decision and found Silvey in contempt.

The Petitioners then appealed the judgments of March 14, 1989 and June 6, 1989. The Second Appellate District of Ohio affirmed the decisions of the trial court on August 27, 1991. The Petitioners filed an application for reconsideration, which the Court of Appeals denied. The Petitioners then filed a motion for the Court of Appeals to certify the record to the Supreme Court of Ohio, contending that the Court of Appeals' decision on six issues conflicted with decisions of other Ohio Appellate districts. This motion was overruled. The Petitioners then filed a memorandum in support of jurisdiction with the Supreme Court of Ohio, which overruled their motion.

B. Statement of Facts

The Dayton Women's Health Center, Inc., is a non-profit corporation providing a full range of reproductive health care services since 1973. While the Center has often been the site of some peaceful picketing activity, the picketing and protesting activity began to escalate in June, 1986. Since that time, the number of picketers progressively increased, the noise level at the clinic rose, and the picket signs have been larger. Picketers began trespassing and putting literature on cars. What began as peaceful picketing ultimately got out of control and the Respondents had no recourse but to file an action for injunctive relief.

The number of protesters at the Dayton Women's Health Center has varied. At times as many as 70 picketers have demonstrated at the clinic. Because of the large number of protesters, it was impractical to join everyone as individual defendants; therefore, the case was submitted to the trial court as a defendant class action. The named defendants were representatives of the defendant class and their conduct at the clinic represented the type of conduct exhibited by all class members whom the Respondents sought to enjoin.

The record in this case is replete with testimony that the named defendants formed the core group of protesters, with

the other class members acting in concert and cooperation with them. After the court issued its preliminary injunction, certified the defendant class, and established a procedure for adding additional class members, two of the class representatives, David Mehaffie and H. F. Perkins, instructed the picketers that they need not accept service of the injunction when attempts were made to serve them.

The voluminous transcript in this case graphically demonstrates instances of intimidating and harassing conduct directed at the Center's employees and patients by the named defendants and the defendant class. The picketers have caused traffic problems, regularly trespassed on the property of the Center, and routinely blocked the Center's ingress and egress. Their conduct forced the facility to close on at least three occasions. On a daily basis the picketers have subjected the patients and staff of the clinic to verbal harassment, threats, and intimidation. The abusive, threatening, and intimidating nature of the defendants' conduct has been alarming and frightening to the clinic's staff and patients. The constant and chronic screaming and chanting by the defendants is so loud that it can be heard inside the facility.

Not surprisingly, the defendants' abusive, harassing, and intimidating conduct has caused the Dayton Women's Health Center and the physicians to lose patients. Moreover, the clinic has had difficulty hiring medical personnel to provide health care at the facility. The conduct of the picketers has been so extreme that one of the clinic's physicians left his practice at the clinic.

The instances of coercion, harassment, and intimidation inflicted by the defendant class members upon the employees and patients of the Dayton Women's Health Center are well documented in the 814-page trial transcript. Their activities have adversely affected the physical well being of the patients of the clinic and have irreparably harmed the lawful business conducted at the clinic. It was based on those facts that the case was presented to the trial court on the plaintiffs' motion for a preliminary and permanent injunction, and that the

permanent injunction, as set forth above, was entered by the trial court.

Following the Court of Appeals' decision rendered on December 5, 1988, which substantially affirmed the decision and order of the trial court, the Respondents filed a motion to modify the permanent injunction. The court's order of March 14, 1989, in addition to affirming in part and overruling in part the Respondents' contempt motions, modified paragraph seven of the permanent injunction to make it consistent with the Court of Appeals' decision.

Although the Petitioners herein were not named defendants in the original litigation, they were each personally served with a copy of the injunction. This is how they became members of the defendant class. Contrary to the Petitioners' contention, the trial court did not enjoin the Petitioners from engaging in lawful activity. The Petitioners were simply served with the same injunction that had been issued to all other members of the defendant class who had been protesting the activities conducted at the Dayton Women's Health Center. Likewise, Petitioner Tammy Silvey was served with a copy of the same injunction that was served upon all of the other protesters. Clearly, none of the Petitioners have been singled out. All of the protesters picketing the activities at the Dayton Women's Health Center have been personally served with the same injunction and the provisions of the injunction have been enforced against all protesters in an even-handed fashion.

SUMMARY OF ARGUMENT

The Petitioners' have stated five reasons for granting the writ. The Petitioners' first and third arguments are essentially identical to the arguments presented in the Petition for Certiorari filed in this court as No. 90-758. The Petitioners have presented no convincing reasons why this court should have to reconsider these issues once again. As to the Petitioners' second argument, the federal case upon which they rely is easily distinguished from the instant case, and the factual basis of the Petitioners' overbreadth theory is unsound. This court need not reach the due process issue posed in the Petitioners' fourth argument, since the Supreme Court of Ohio disposed of this issue on a purely procedural basis. As to their fifth argument, the Petitioners are attempting to assert this argument for the first time in this court, and so the argument need not be considered on this basis alone.

ARGUMENT

I.

The permanent injunction does not offend the First Amendment guarantees of free speech and free assembly, because the provisions of the injunction are content-neutral, narrowly tailored to serve a significant governmental interest, and leave open ample alternative channels of communication.

The Petitioners' first argument is taken verbatim from their petition filed previously. (Petition for Cert. No. 90-758, p. 11) This Court saw fit not to grant certiorari then, and there is no reason to do so now. The cases cited by the Petitioners do not support their argument.

In *Boos* v. *Barry*, this Court addressed the constitutionality of a statute that prohibited certain behavior within 500 feet of any foreign embassy. 485 U.S. 312 (1988). The statute at issue contained a display clause and a congregation clause. The display clause prohibited the display of any sign criticizing the government of a given embassy, where the sign was displayed within 500 feet of the embassy. This Court held that the display clause was unconstitutional. *Id.* at 329. The Court pointed to 18 U.S.C. § 112, which already protected the interest asserted by the government in support of the display clause. *Id.* at 324-329. The congregation clause prohibited more than three people from congregating within 500 feet of an embassy. This Court held that the congregation clause was *not* unconstitutional. Clearly, the display clause was aimed solely at the content of political expression, whereas the congregation clause was aimed at conduct.

The injunction at issue, carefully drafted after days of testimony, is conduct-based, and not content-based. There was simply no other way for the trial court to protect the countervailing interest of the parties, other than by drafting a narrowly-tailored injunction. In terms of providing a public forum for demonstration, the trial court's injunction is less

restrictive than the congregation clause in *Boos*, *supra*, which this Court found not to be constitutionally infirm. In *Boos*, the statute prohibited a congregation of more than three people within 500 feet of an embassy. In the injunction at issue here, the Petitioners are allowed to demonstrate on the front sidewalk of the Dayton Women's Health Center. In this respect, *Boos* actually supports the position of the Respondents.

In *Frisby* v. *Schultz*, the issue concerned the constitutionality of an ordinance, not of an injunction. 487 U.S. 474 (1988). This court held that an ordinance making it "unlawful for any person to engage in picketing before or about the residence or dwelling of any individual" is not facially invalid under the First Amendment. Although the Petitioners rely on *Frisby* to support their argument that the ban on residential picketing is overbroad, their reliance is misplaced, because the *Frisby* court declined to address the overbreadth issue.

> Of course, this case presents only a facial challenge to the ordinance. Particular hypo-thetical applications of the ordinance — . . . — may present somewhat different questions. . . . Moreover, since our First Amendment analysis is grounded in protection of the unwilling residential listener, the constitutionality of applying the ordinance to such hypotheticals remains open to question. These are, however, questions we need not address today in order to dispose of appellee's facial challenge.

487 U.S. at 488.

The scope of the permanent injunction at issue is simply a reflection of the facts introduced into evidence at trial. Notwithstanding their religious and moral convictions, the conduct of the Petitioners went beyond the realm of protected free speech and became an abusive vehicle for harassing, intimidating and coercing the staff, physicians and patients of

the Dayton Women's Health Center. It is precisely this type of abusive conduct which the courts are empowered to enjoin through reasonable time, place and manner restrictions. *Bering* v. *Share*, 106 Wash. 2d 212, 721 P.2d 918 (1986), *cert. dismissed*, 479 U.S. 1050 (1987); *Parkmed Company* v. *Pro-Life Counseling, Inc.*, 442 N.Y.S. 2d 396, 110 Misc. 2d 369 (Sup. Ct., N.Y. 1981), *modified*, 457 N.Y.S. 2d 27, 91 A.D.2d 551 (App. Div. 1982); *Planned Parenthood Ass'n of Cincinnati, Inc.* v. *Project Jericho*, 52 Ohio St. 3d 56, 556 N.E.2d 157 (1990). All of the restrictions contained in the permanent injunction were designed to control, not eliminate, the Petitioners' conduct, in a manner which would also permit the Dayton Women's Health Center and its patients and employees to engage in constitutionally protected activities. The permanent injunction did not foreclose the Petitioners' rights of speech, but merely restricted their activities in a constitutionally permissible manner.

The injunction is content-neutral and is based on content-neutral findings of fact. The trial court properly refused to restrict the content of the Petitioners' speech. The injunction is narrowly tailored and limits only the number of picketers, the location of picketing, and the manner of their demonstrations. It serves the state's significant interests without unduly limiting the Petitioners' activities. The injunction does not foreclose alternative channels of communication. It allows the Petitioners to convey their beliefs by means of pickets, and allows them to speak with anyone they choose.

II

The injunction does not enjoin class members from engaging in constitutionally protected activity on private property.

To support their second argument, the Petitioners cite a state case and *Frisby* v. *Schultz*, *supra*. The Petitioners have neglected to point out the key distinction between *Frisby* v.

Schultz and the case at bar, which is that *Frisby* involved an ordinance of city-wide application, whereas the instant case involves an injunction narrowly tailored by the trial court after exhaustive testimony and evidence. Herein, any picketer within view of the Dayton Women's Health Center must be considered as a distinct component of the overall harm caused by the mass of picketers and protesters within view of the Dayton Women's Health Center. This is true regardless of whether a picketer has been given express permission to be on private property within view of the Dayton Women's Health Center.

The injunction prohibits picketing. It does not preclude a person aligned politically with the Petitioners from visiting a residence within view of the Dayton Women's Health Center. If such a person were invited to a nearby residence before the person began to protest, then that person would not be bound by the injunction, since the person would not have been served with the injunction. A person cannot be bound before being served with the injunction, and one cannot be served until one begins protesting.

Therefore, the federal case upon which the Petitioners rely is distinguishable from the case at bar, and the factual basis of their overbreadth theory is unsound.

III.

The injunction does not violate the Due Process rights of absent class members.

The Petitioners' third argument is essentially identical to the argument raised in their earlier petition for certiorari. (Petition for Cert., No. 90-758, p. 18) Once again, the Petitioners have presented no convincing reason as to why certiorari should be granted.

The Petitioners rely upon *Mullane* v. *Central Hanover Bank & Trust Co.* as establishing "some important guidance"

in determining what constitutes notice in the context of defendant class actions. 339 U.S. 306 (1950). The Petitioners' reliance upon *Mullane* is misplaced. No injunction was issued in *Mullane*, nor was it a class action case. Even the notice aspect of the case is distinguishable from the instant case. In *Mullane*, notice by publication was provided to the individual investors. *Id.* at 310. Herein, by way of contrast, personal notice of the injunction is required before an absent class member can be bound thereby. "Personal service of written notice within the jurisdiction is the classic form of notice always adequate in any type of proceeding." *Id.* at 313. The personal service provided to all members of the defendant class satisfies the requirements of due process, according to the case cited by the Petitioners.

Contrary to the Petitioners' assertion, the injunction does not preclude absent class members from asserting individual defenses, so long as such defenses are unique, and not common defenses of the class. This issue has already been addressed by the Supreme Court of Ohio in *Planned Parenthood Ass'n of Cincinnati, Inc.* v. *Project Jericho*, 52 Ohio St. 3d 56, 556 N.E. 2d 157 (1990).

> [A]bsent class members are not precluded from raising individual defenses . . . . [They] may not, however, attack the validity of the injunction once that issue had been litigated by class representatives.
>
> [A]n absent class member is not precluded from raising a unique defense in a later proceeding.

Id. at 65 (citations omitted).

Although the Petitioners may claim that they did not engage in conduct in violation of the injunction, that is not a unique defense but a common defense. Even through all of the contempt hearings, none of the Petitioners raised a unique defense.

The Petitioners argue that an injunction cannot bind persons "who act independently" of the parties enjoined. First,

the record will show that the Petitioners have not acted independently, but have acted in cooperation with the class representatives in their protesting activities. Second, even assuming the Petitioners have acted independently, a court of equity has the inherent jurisdiction to bind certain nonparties to the provisions of an injunction so as to preserve the rights and duties of the parties to the injunction. *United States* v. *Hall*, 472 F.2d 261, 265 (5th Cir. 1973). The *Hall* court discussed and distinguished the cases relied upon by the Petitioners: *Alemite Mfg.* v. *Staff*, 42 F.2d 832 (2d Cir. 1930) and *Chase National Bank* v. *City of Norwalk*, 291 U.S. 431 (1934). In these two cases, the actions of outsiders who were non-parties were not enjoined, because their actions did not disturb the rights of both parties according to the provisions of the injunction. 472 F.2d at 264, 265. The *Hall* case arose out of the controversy surrounding a school desegregation case. *Id.* at 262. Hall, a non-party, was convicted of criminal contempt for violating the order, of which he had notice. *Id.* at 264. The conviction was upheld because Hall's actions contributed to the atmosphere of racial tension, and thus threatened the rights and duties of both parties under the temporary restraining order. *Id.* at 265. The court held that "willful violation of that order by one having notice of it constitutes criminal contempt." *Id.* at 268.

Hall supports the principle that certain non-parties who have received notice of an injunction may be bound by its provisions. Mr. Hall was bound by the restraining order, even though he was not a member of the class of students to whom the order was directed. The Petitioners in this case, however, are members of the defendant class, thus providing an additional reason why the Petitioners should be bound by the injunction.

The Petitioners have also cited *NAACP* v. *Claiborne Hardware Co.* to support their Due Process argument, even though the defendants in that case were not certified as a class. 458 U.S. 886 (1982). The class certification distinction aside, however, the Second Appellate District of Ohio has addressed and refuted the Petitioners' Due Process argument.

> Appellants' reliance on *NAACP* v. *Claiborne Hardware Co.* . . . is misplaced: The court's order does not impose liability on members of a class or by reason of mere association. Any liability arises after individual notice and violation of the order.

Dayton Women's Health Ctr. v. *Enix*, 68 Ohio App. 3d 579, 587 (1991) (See Appendix to Petition for Cert. p. 76).

IV.

The Appellate Court did not violate the Due Process rights of the Petitioners by applying the law of the case doctrine.

Petitioners argue that their Due Process rights were violated by the application of the law of the case doctrine. They argue that the application of the doctrine prevented them from challenging the constitutionality of the injunction and from challenging the defendant class certification.

This Court need not address the class certification issue. The Supreme Court of Ohio disposed of this issue on a purely procedural basis, and so it is unnecessary to reach the Due Process issue. Specifically, a trial court order determining that an action shall or shall not be maintained as a class action is a final, appealable order, and a party must appeal such an order within thirty days pursuant to Rule 4(A) of the Ohio Rules of Appellate Procedure. *Dayton Women's Health Center* v. *Enix*, 52 Ohio St. 3d 67, 555 N.E. 2d 956 (1990). Because the class representative did not appeal the order of the trial court certifying the defendant class within the thirty-day time limit, the right of anyone to challenge the certification of the defendant class has been waived.

Once again, the cases cited by the Petitioners are easily distinguished from the facts at bar, and these cases offer little, if any, support for the Petitioners' basic argument. *Blonder-Tongue Laboratories, Inc.* v. *University of Illinois Founda-*

tion was not a class action case, did not involve an injunction, and the issue of Due Process was not even addressed by this Court. 402 U.S. 313 (1971). "But the case before us involves neither due process nor 'offensive use' questions." *Id.* at 330.

The Petitioners' citation of *Hansberry* v. *Lee* actually supports the position of Respondents. 311 U.S. 32 (1940).

> [T]here is scope within the framework of the Constitution for holding in appropriate cases that a judgment rendered in a class suit is *res judicata* as to members of the class who are not formal parties to the suit.

Id. at 42.

Phillips Petroleum Co. v. *Shutts*, although a class action case, did not concern itself with the enforcement of an injunction. 472 U.S. 797 (1985). Therefore, the principles set forth in that case do not preclude the application of the holding of *United States* v. *Hall*, *supra*, to the facts of this case. This is demonstrated in the opinion of the Second Appellate District.

> The court acted on its inherent power to preserve the effect of its orders and to protect the rights determined therein from intentional interference by other persons.

Dayton Women's Health Center v. *Enix*, 68 Ohio App. 3d 579, 587 (1991) (citing *United States* v. *Hall*, 472 F.2d 261) (*See* Appendix to Petition for Cert., p. 75).

V.

The trial court tailored the provisions of the injunction according to the testimony and evidence presented at the hearings, so as not to conflict with the doctrine of prior restraint.

The Petitioners argue that the injunction conflicts with the doctrine of prior restraints. This position is untenable. No *prior* restraints have been imposed against the Petitioners in

this case. The trial court heard extensive testimony before issuing its injunction. The provisions of the injunction are carefully tailored so as to balance the rights of the respective parties. Unlike the cases cited by the Petitioners, the injunction was not issued *ex parte* (*see Carroll* v. *President of Princess Anne*, 393 U.S. 175 (1968)), nor is the injunction a prior restraint against the publication of documents or distribution of leaflets. *See New York Times Co.* v. *United States*, 403 U.S. 713 (1971); *Organization for a Better Austin* v. *Keefe*, 402 U.S. 415 (1971).

More important than the substance of the Petitioners' argument, however, is the fact that the Petitioners failed to present this argument in the Court of Appeals. (*See* Briefs of Appellants, Case Nos. 11545 and 11637 (combined brief); 11685)). For this reason, the issue of prior restraints was neither considered nor decided by the Second Appellate District. *Dayton Women's Health Center* v. *Enix*, 68 Ohio App. 3d 579 (1991) (*See* Appendix to Petition for Cert., p. 69). Since the issue of prior restraints has not been decided by the court below, this Court should not address this issue. Supreme Court Rules, Rule 10.1.(c).

CONCLUSION

While the nation may be deeply divided over the issue of abortion, this lawsuit does not involve that issue. The case simply revolves around the power of an equity court to balance competing constitutional interests and to protect its substantial interests in keeping streets and sidewalks open and available for the movement of people and property, protecting the safety and convenience of persons using public and private facilities, and ensuring its citizens unimpeded access to medical care. The permanent injunction balances the Petitioners' first amendment rights with the competing constitutional rights of others. The injunction preserves the rights of the Petitioners to engage in open and robust debate about any subject they choose. The restrictions imposed by the trial court do not restrict the content of their speech. It simply imposes reasonable time, place and manner restrictions during those times when they are at the Dayton Women's Health Center or the private offices of its physicians. States must be free to protect their own interests and the rights of all its citizens. Any other conclusion could lead states down the path of chaos.

The trial court's injunction and class certification orders were based on the particular facts of this case. Those orders have passed the scrutiny of both the Montgomery County Court of Appeals and the Ohio Supreme Court and should not be the subject of further inquiry by the United States Supreme Court.

The Petitioners' writ of certiorari should be denied.

Respectfully submitted,

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